Supreme Court, U.S.
FILED
JUN 3 1991
OFFICE OF THE CLERK

No. 90-1682

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JAMES C. CATHEY and BETTE CATHEY,
Petitioners,

v.

METROPOLITAN LIFE INSURANCE COMPANY,
THE DOW CHEMICAL COMPANY, and
MICHAEL H. MADDOLIN,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

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CONSOLIDATED BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Are claims raised in the context of state-court proceedings that could have been raised in prior federal proceedings precluded from being reheard?

2. Does the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), pre-empt state laws providing remedies for alleged improper processing of a claim for ERISA benefits?

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CONSOLIDATED BRIEF IN OPPOSITION

The respondents, Metropolitan Life Insurance Company, The Dow Chemical Company, and Michael H. Maddolin, respectfully request that this Court deny the petition for writ of *certiorari*, seeking review of the judgment of the Supreme Court of Texas in this case. The opinion of the Supreme Court of Texas is reported at 805 S.W.2d 387 (1991).

STATEMENT OF THE CASE

Petitioner James C. Cathey, a former employee of respondent The Dow Chemical Company ("Dow") (A. 2),[1] and his wife, petitioner Bette Cathey, ask this Court to grant them relief on a claim for "twenty-four (24) hour a day nursing" care benefits under Dow's "Employee Benefit Plan" (R. 230; A. 2).[2] Petitioners' last request for identical relief came to an end in February of this year when this Court denied their petition for review of the Fifth Circuit's holding that "the Catheys are not entitled to around-the-clock nursing benefits" under the same Dow Plan here at issue. *Cathey v. Dow Chemical Co. Medical Care Program*, 907 F.2d 554, 556 (5th Cir. 1990), *cert. denied*, 59 U.S.L.W. 3562, 111 S Ct. 964, 112 L Ed. 2d 1051 (1991) ("*Cathey-I*"); *see also* Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, No. 90-960, (Dec. 12, 1990) ("Petition, *Cathey-I*").[3] Petitioners characterize *Cathey-I* as affording them "no effective relief." Petition for a writ of Certiorari to the Supreme Court of Texas, No. 90-1682, at 5, n.1 (April 30, 1991) ("Petition, *Cathey-II*").

Cathey-I was filed in Texas state court and removed to federal district court under the civil enforcement provi-

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[1] All "A." references are to the Appendix of the Petiiton for a Writ of Certiorari to the Supreme Court of Texas; all "R." references are to the Record on Appeal before the Supreme Court of Texas.

[2] The Dow Plan is sponsored by Dow (A. 2), with respondent Metropolitan Life Insurance Company ("MetLife") acting as "claims administrator" (A. 2; R. 230). *See also Cathey v. Dow Chemical Co. Medical Care Program*, 907 F.2d 554, 556 (5th Cir. 1990), *cert. denied*, 59 U.S.L.W. 3562, 111 S. Ct. 964, 112 L. Ed. 2d 1051 (1991). Mr. Cathey is retired. 907 F.2d at 555. The requested nursing benefits are for Mrs. Cathey, a dependent beneficiary under the Dow Plan. *Id.*

[3] Only the plan itself—The Dow Chemical Company Medical Care Program—was named as defendant in petitioners' federal action. 907 F.2d at 554.

sions of ERISA, section 502, 29 U.S.C. 1132. *See* 907 F.2d at 555.[4] By their present action, also commenced in the state courts of Texas ("*Cathey-II*"), petitioners seek to obtain relief under section 16 of article 21.21 of the Texas Insurance Code ("section 16").

Section 16 provides remedies to private litigants purportedly injured by various "acts or practices" specified by section 4 of article 21.21 of the Texas Insurance Code, the regulations of the Texas State Board of Insurance, and section 17.46 of the Texas Business & Commerce Code, commonly known as the Texas Deceptive Trade Practices Act.[5] *See* Petition, *Cathey-II* at 5, 12. The Catheys refused a court-ordered opportunity to amend their Texas petition to "state an ERISA cause of action" (A. 2; *see also* A. 32), notwithstanding the fact that they voluntarily amended their Texas petition twice for reasons of their own choosing (*see* R. 230). The Supreme Court of Texas, citing controlling authority of this Court,[6] ultimately held that petitioners' section 16 claim was preempted by ERISA because "[s]ection 16 . . . provide[s] recovery that was not included under ERISA" (A. 8). The Texas Supreme Court therefore affirmed summary judgment in respondents' favor (A. 1, 9). It is that grant of summary judgment, decided by the Supreme Court of Texas "in a way that [*comports*] with applicable decisions of this Court," *see* Rule 10.1(b), U.S. Sup. Ct. (1991), that petitioners ask this Court to review for alleged error.

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[4] By commencing their action for nursing benefits under ERISA, petitioners necessarily conceded that the Dow Plan was an ERISA plan.

[5] Tex. Ins. Code Ann. art. 21.21 § 16(a), (b) (Vernon Supp. 1991); *see also id.* § 2(b) (defining "Board").

[6] *E.g., Ingersoll-Rand Co. v. McClendon*, —— U.S. ——, 111 S. Ct. 478, 112 L. Ed. 2d 474 (1990); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987) (*see* A. 4, 6, 10-11).

By their Petition for a Writ of Certiorari in *Cathey-I*, the Catheys asked this Court to consider the following question:

> Can ERISA preempt a state law regulating unfair insurance practices that was enacted pursuant to the McCarran-Ferguson Act, notwithstanding the language of the "saving clause" in 29 U.S.C. § 1144 (b) (2) (A) that explicitly saves from preemption "any law of any State which regulates insurance"?

Petition, *Cathey-I* at ii. Only four months ago, petitioners boldly stated, in their Reply to respondent's opposition to the Petition in *Cathey-I*, that "[t]he issue of [ERISA] preemption is *now* ripe for consideration." Petitioners' Reply Brief, On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, No. 90-960, 3 ("Reply, *Cathey-I*") (emphasis added). This Court denied that Petition, 59 U.S.L.W. at 3562, 111 S. Ct. at 964, 112 L. Ed. 2d at 1051, and should similarly deny the Petition in the present, related case.

The question raised by the Petition in *Cathey-II* reworks only slightly the above-quoted question from *Cathey-I* to reflect petitioners' continuing view that this Court's opinion in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), was too broadly decided:

> Is this Court's decision in *Pilot Life Insurance Co. v. Dedeaux* properly read to require preemption of a state law regulating unfair insurance practices, even though § 1144 (b) (2) (A) of ERISA expressly saves from preemption "any law of any State which regulates insurance"?

Petition, *Cathey-II* at i. Although the question as phrased in *Cathey-I* did not explicitly refer to *Pilot Life* (which petitioners now dub a "problem," Petition, *Cathey-II* at 18), petitioners' briefs in *Cathey-I* did. Then as now, petitioners argued that whether section 16 was preempted by ERISA "turn[ed] on the proper reading of

Pilot Life." Reply, *Cathey-I* at 3; *see also* Petition, *Cathey-II* at 3. Then as now, petitioners called on this Court "to reconcile ERISA's preemption and saving clauses . . .," Petition, *Cathey-II* at 3, by "explain[ing] how" (as petitioners put it) "the saving clause can be effectively read out of ERISA in deference to the preemption clause." Reply, *Cathey-I* at 3.

Not only are the questions raised in both *Cathey* Petitions the same,[7] but there is only one set of facts present —the facts scarcely referenced in the Catheys' current Petition. It should be remembered that arguments in both Petitions relate to the Catheys' contention that their claim for 24-hour-a-day nursing care benefits under the Dow Plan was wrongly denied—a claim the Fifth Circuit previously laid to rest by rejecting it. 907 F.2d at 561. It should also be noted that while neither the record in *Cathey-I* nor the record in *Cathey-II* explain why, it was *the Catheys* who *selected* the health benefits under Dow's so-called "New Plan" of which they continue to complain.[8] Moreover, while the Fifth Circuit held, ni *Cathey-I*, that petitioners were "not entitled to around-the-clock nursing benefits," it nevertheless also held that they were "minimally entitled to fifty home visits annually," provided that conditions for Plan coverage were otherwise met. *Id.* It is *that* holding, in *Cathey-I*, which the Supreme Court of Texas, in *Cathey-II*, acknowledged as affording peti-

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[7] Petitioners raised additional questions in *Cathey-I*, not relevant to the instant Petition. *See* Petition, *Cathey-I* at ii.

[8] The Fifth Circuit held that the Catheys were bound by "*their* selection" of the benefits available under the "New Plan." 907 F.2d at 560 (emphasis added). The reason for that selection, although not explicitly stated, may be surmised. As the Fifth Circuit noted in *Cathey-I*, the "Old" Dow Plan contained a "total *lifetime* maximum of *$50,000*" on the nursing benefits here at issue, 907 F.2d at 556 (emphasis added), while the New Plan had no specific dollar cap on nursing benefits other than the comprehensive plan limit of *$1,000,000* (R. 65), "albeit [the Plan does] not [cover] beyond fifty home visits annually." 907 F.2d at 561.

tioners "partial recovery on their ERISA claim" (A. 2, n. 1), but which petitioners characterize as affording them "no effective relief." Petition, *Cathey-II* at 5, n.1.

The *Cathey-II* Texas petition sought to obtain what petitioners would apparently deem "effective relief." It demanded an award of "actual damages" under Texas state law in excess of the "just sum of ONE MILLION DOLLARS ($1,000,000.00) for the [respondents'] breach of duty to [petitioners]" (R. 234), plus "treble the amount of actual damages they may show themselves entitled to as a matter of law" (R. 234), as well as "exemplary damages in the amount sufficient to punish [respondents] and to deter others from being tempted to engage in the same or similar conduct" to that in which respondent purportedly engaged (R. 235). While petitioners now seek to "limit this appeal [*sic*] to their claims under the Texas Insurance Code, article 21.21, § 16," Petition, *Cathey-II* at 5, the fact remains that petitioners demanded the forgoing relief in part, as an "[*a*]*lternative*[]" to their request for "payment of past, present and future benefits" under the Dow Plan (R. 230, 232) (emphasis added).

Petitioners have already *obtained* relief under the Dow Plan. 907 F.2d at 561. They simply consider it "[in]effective." Petition, *Cathey-II* at 5, n.1. That view reveals the shallowness of petitioners' arguments. Petitioners do not call on this Court to balance "the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefits plans" which Congress achieved in enacting ERISA. *Pilot Life*, 481 U.S. at 54. Rather, petitioners seek to destroy that balance by grafting onto ERISA's "exclusive" remedial scheme[9] a string of state-law remedies which ERISA excludes but which *petitioners*—as opposed to Congress—apparently deem "effective."

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[9] *Pilot Life*, 481 U.S. at 54, 57; *Ingersoll-Rand Co. v. McClendon*, —— U.S. at ——, 111 S. Ct. at 485, 112 L. Ed. 2d at 487 (1990).

REASONS THE PETITION SHOULD BE DENIED

I. BECAUSE THE QUESTION PETITIONERS RAISE IS BARRED UNDER THE "CLAIM PRECLUSION" DOCTRINE, PETITIONERS RAISE NOTHING FOR THIS COURT TO REVIEW.

Rule 10 of this Court permits the discretionary writ of *certiorari* to be granted "*only* when there are special and important reasons therefor." (Emphasis added). Because the present Petition raises no more than the question this Court previously addressed and answered in *Pilot Life* and *Ingersoll-Rand Co. v. McClendon* and declined to revisit in *Cathey-I*, there is nothing for the Court to reconsider which is either "special" or "important."

Indeed, for the Court to review the question it previously declined to revisit in *Cathey-I* would defeat the doctrine of "claim preclusion," endorsed by this Court in *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 77 n.1 (1984). Claim preclusion refers to "the preclusive effect of a judgment in foreclosing litigation of matters that should have been raised in an earlier suit." *Id.* As part of the doctrine of "*res judicata*," it serves the goal of leaving parties (and courts) who have worked their way through facts and legal theories to judgment in final repose.[10]

Claim preclusion is properly enforced when the "gist" of two actions is the same, or when the evidence required in a prior proceeding (or which would have been required, had all claims relevant to the same transaction been

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[10] As the eminent authority on federal practice and procedure has put it, doctrines under the umbrella of "*res judicata*"—of which "claim preclusion" is one—focus

> on the need to protect a victorious party against oppression by a wealthy, wishful, or even paranoid adversary. Some opinions reflect an additional concern with protecting an unsuccessful party against his own folly in risking a second try.

18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4403 at 14 (1981). In *Migra*, 465 U.S. at 77 n.1, this Court

tested) is the same as in a subsequent proceeding.[11] 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4407, 60-61 (1981); *see also Herendeen v. Champion Int'l Corp.*, 525 F.2d 130, 133-34 (2d Cir. 1975); *Moreno v. Marbin Productions, Inc.*, 296 F.2d 543, 544 (2d Cir. 1961). It is enforceable by parties to a second action who are either the same as those to a prior suit or who "bore such a relationship to the first suit or to the parties [to it]" that it is proper to preclude new claims relating to the same transaction from being litigated, thereby preserving the desired state of repose. *Migra*, 465 U.S. at 84; 18 Wright, *supra*, § 4406 at 45, 47.

There can be no question that the "gist" of *Cathey-I* and *Cathey-II* is the same or that the parties to both actions "bore such a relationship" to each other that it is proper for the final judgment in *Cathey-I* to bar petitioners from continuing to litigate the legal significance of their invalid claim for 24-hour-a-day nursing care benefits under the Dow Plan. Both actions alleged the same entitlement to the same benefits under the same employee benefit plan. *Compare* 907 F.2d at 555-56 *with* R. 229-31. In both actions, petitioners maintained that MetLife, acting through one of its agents (respondent Michael H. Maddolin), wrongly denied their invalid claim. *Compare* 907 F.2d at 555-57 *with* R. 229-31. The petitioners in both actions are identical, and while the

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referred to Wright *et al.*, *supra*, as "helpful" in gaining a better understanding of "claim preclusion."

[11] A proceeding is "prior," for purposes of claim preclusion, if a judgment in that proceeding is rendered "prior" to the entry of judgment in subsequent or parallel proceedings. Wright *et al.*, *supra*, § 4404 at 23-24. In the present case, because the prior proceeding arose under federal law, 907 F.2d at 555-56, this Court need not consider the impact of claim preclusion under Texas law, as the Court was required to do with regard to the prior Ohio proceedings at issue in *Migra*. *See* 465 U.S. at 85-87.

named respondents differ,[12] the Plan sued in *Cathey-I* only acts through its fiduciaries and their employees—namely, through Dow, MetLife, and employees such as respondent Moddolin—a fact which the Fifth Circuit's opinion in *Cathey-I* made abundantly clear by referring, either expressly or generically, to each respondent to the present Petition. *See* 907 F.2d at 555-557. Absolute privity among the parties to both actions therefore exists. Moreover, as *Pilot Life*, *Ingersoll-Rand* and a multitude of other lawsuits demonstrate, many ERISA benefit actions are brought against employers, as ERISA-plan sponsors, or insurance companies, as either claims administrators or insurers of the benefits that many plans provide, rather than against the plan itself. *See, e.g.*, *Pilot Life*, 481 U.S. at 43; *Ingersoll-Rand*, —— U.S. at ——, 111 S. Ct. at 481, 112 L. Ed. 2d at 481. In any event, *these* petitioners *had* the opportunity to combine their present allegations with an ERISA cause of action (A. 32), they simply chose not to take it (A. 2). Nothing separates *Cathey-I* from *Cathey-II* but petitioners' own refusal to amend their pleadings, in their attempt to try the same case before different judicial forums, in the hope that they would somehow obtain what they deem "effective relief."

Finally, and conclusively, it is irrefutable that petitioners could or should have raised their section 16 claim in the context of *Cathey-I*, because they *did* raise it, by their prior Petition to this Court. Petition, *Cathey-I* at ii. Petitioners' suggestion that it is *now* time for this Court "to reexamine and clarify its decision in *Pilot Life*," Petition, *Cathey-II* at 3, is a subterfuge.[13] That is

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[12] The federal action named only the Dow Plan as defendant; the current state-court action names Dow, MetLife and Michael H. Maddolin, a MetLife employee responsible for claim processing under the Dow Plan, as defendants.

[13] Petitioners overlook the fact that this Court *did* reexamine, clarify, and staunchly adhere to its *Pilot Life* decision as recently

precisely what petitioners argued last time. Reply, *Cathey-I* at 1, 3. What petitioners *really* want is a second bite at the apple. They should not get it. There is nothing in *Cathey-II* that should not or could not have been addressed in *Cathey-I*, or vice-versa. Petitioners may not squeeze under the claim-preclusion bar and squander precious judicial resources by trying different legal theories before different judicial bodies, in their repetitive bid for disparate judicial relief. They are precluded, by the final judgment in *Cathey-I*, from further pursuing their section 16 claim, which this Court previously declined to consider. *See* 59 U.S.L.W. at 3562, 111 S. Ct. at 964, 112 L. Ed. 2d at 1051; *see also Migra*, 465 U.S. at 77 n.1, 84-85; *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985).

II. BECAUSE THE JUDGMENT OF THE SUPREME COURT OF TEXAS COMPORTS WITH APPLICABLE DECISIONS OF THIS COURT, THERE IS NOTHING "SPECIAL" OR "IMPORTANT" FOR THIS COURT TO REVIEW.

ERISA "supersedes any and all State laws[14] insofar as they may now or hereafter *relate to* any *employee benefit plan* . . .," ERISA § 514(a), 29 U.S.C. § 1144(a)

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as December of last year, when it found that ERISA preempts remedies arising under the wrongful discharge laws of the very State from which the present petitioners hail—Texas. *Ingersoll-Rand*, —— U.S. at ——, 111 S. Ct. at 481, 485-86, 112 L. Ed. 2d 481-82, 487-88. Moreover, while the Petition in *Cathey-II* makes no mention of *Ingersoll-Rand* (except insofar as it is cited by the Texas Supreme Court in materials contained in the appendix to the Petition), petitioners did cite *Ingersoll-Rand* in their Reply in *Cathey-I*, indicating that petitioners knew this Court had revisited its *Pilot Life* holding only five months ago. *See Reply, Cathey-I* at 2.

[14] For purposes of ERISA § 514, 29 U.S.C. § 1144, " 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. . . ." *Id.* § 514(c)(1), 29 U.S.C. § 1144(c)(1).

(emphasis added), but saves from pre-emption "any State law which regulates insurance, banking, or securities." [15] ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A) (emphasis added). Petitioners concede (as they must) that their section 16 claim "relate[s] to" Dow's ERISA plan (*see* R. 231; *see also Cathey*, 907 F.2d at 555-56). They argue, however, that section 16 is saved from pre-emption by ERISA's saving clause. Petition, *Cathey-II* at 14-28. According to petitioners, section 16 "undeniably" regulates insurance. Petition, *Cathey-II* at 17.

Petitioners' assertion has previously been denied by the Fifth Circuit, which held that section 16 does *not* "regulate insurance" within the meaning of ERISA's saving clause. *Ramirez v. Inter-Continental Hotels*, 890 F.2d 760, 763 (1989). Moreover, *this* Court, only six months ago, in holding that ERISA pre-empts the Texas wrongful-discharge law insofar as it provides "a remedy for the violation of a right expressly guaranteed by § 510 [of ERISA] and exclusively enforced by § 502(a)," *unanimously* reiterated that ERISA's civil enforcement scheme *is* "exclusive." *Ingersoll-Rand*, —— U.S. at ——, 111 S. Ct. at 486, 112 L. Ed. 2d at 488.[16] In reaching that conclusion, this Court reversed the Supreme Court of Texas, which had found to the contrary. *See McClendon v. Ingersoll-Rand Co.*, 779 S.W. 2d 69 (1989). It should, therefore, come as no surprise that in *Cathey-II* three concurring justices of the Supreme Court of Texas made

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[15] ERISA defines "employee benefit plan[s]" to include "employee *welfare* benefit plan[s]." ERISA § 2(3), 29 U.S.C. § 1002(3) (emphasis added). The latter include plans which supply "medical, surgical, or hospital care or benefits." ERISA § 2(1), 29 U.S.C. § 1002(1).

[16] All Justices joined in Part II-B of the Court's opinion in *Ingersoll-Rand*, which reiterates that ERISA's civil enforcement provisions are "exclusive." —— U.S. at ——, 111 S. Ct. at 480, 112 L. Ed. 2d at 481; *see also* 111 S. Ct. at 484-86.

special reference to this Court's decision in *Ingersoll-Rand*, calling *Ingersoll-Rand* (which had just been decided) and *Pilot Life* into question (A. 10-11). What is equally clear is that even the Texas Supreme Court justices who concurred in *Cathey-II* "[r]ecogniz[ed] that *Ingersoll-Rand* . . . and *Pilot Life* . . . control this case . . ." (A. 10-11) and required them to find that ERISA pre-empts section 16 (A. 11).

Pilot Life held that, because the addition of state-law remedies would destroy the delicate balancing of interests Congress had achieved when *it* determined which remedies *should* be available in ERISA benefit actions, state-law remedies relating to claims for benefits under an ERISA plan would be pre-empted. 481 U.S. at 55-57. That point was hammered home and expanded by this Court's decision in *Ingersoll-Rand*, which held that although ERISA does not expressly pre-empt all state-law remedies, under the doctrine of implied pre-emption, state "cause[s] of action w[ill] be pre-empted" if they "conflict[] directly with an ERISA cause of action." —— U.S. at ——, 111 S. Ct. at 484-85, 112 L. Ed. 2d at 486.[17] In reaching that conclusion, this Court noted that it had "examined [section 502(a) of ERISA] at some length" in *Pilot Life*, and set forth *again*, in its entirety, the underpinning rationale it had previously stated:

> "[T]he detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion

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[17] A state-law remedy conflicts with ERISA if it provides a remedy for rights "expressly guaranteed" by ERISA and exclusively enforced by section 502(a), 29 U.S.C. § 1132(a). —— U.S. at ——, 111 S. Ct. at 486, 112 L. Ed. 2d at 488. The rights at issue in *Ingersoll-Rand* arose under section 510 of ERISA, 29 U.S.C. § 1140, which guarantees against interference with protected ERISA rights. *Id.*

> of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. 'The six carefully integrated civil enforcement provisions found in § 502(a) of the statute, as finally enacted . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.'" 418 U.S., at 54 (quoting *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985)).

Ingersoll-Rand, —— U.S. at ——, 111 S. Ct. at 485, 112 L. Ed. 2d at 487 (emphasis in original).

The import of ERISA's implied pre-emption of state-law remedies has not been lost on any jurisdiction. The State of California, for example, in finding that ERISA pre-empted California statutory remedies similar to those at issue in the present case, noted as early as 1988 that

> [W]hile [ERISA's] saving clause may allow states to enact statutes that regulate the *substantive* terms of insurance policies [citation omitted], the clause does not allow states to enact statutes that provide conflicting *procedural remedies* (see *Pilot Life*, supra, 107 S. Ct. at pp. 1555-1558). A contrary rule would undermine ERISA's important policy of promoting uniformity in employee benefit-law remedies, by creating the potential for conflicting standards of recovery. [Citation omitted.]

Commercial Life Ins. Co. v. Superior Court, 47 Cal. 3d 473, 484, 764 P.2d 1059, 1066, 253 Cal. Rptr. 682, 689 (Cal. 1988), *cert. denied sub nom., Juliano v. Commercial Life Ins. Co.*, —— U.S. ——, 109 S. Ct. 2087, 104 L. Ed. 2d 651 (1989) (emphasis in original).[18] Indeed, a year

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[18] The "only case decided after *Pilot Life*" to which petitioners are able to point as alleged support for their request that this Court reconsider its *Pilot Life* holding— *Goodrich v. General Tel. Co. of Calif.*, 195 Cal. App. 3d 675, 241 Cal. Rptr. 640 (1987)—is an intermediate California decision. That decision was

before this Court's *Ingersoll-Rand* decision, the Fifth Circuit had already concluded that section 16 conflicted with, and therefore was pre-empted by, ERISA's "exclusive" remedial scheme, 890 F.2d at 763-64 (citing *Pilot Life*). Other jurisdictions have reached similar conclusions. *In re Life Ins. Co. of N. Am.*, 857 F.2d 1190 (8th Cir. 1988) (Missouri statute prohibiting vexatious refusal to pay insurance claims pre-empted by ERISA); *Kanne v. Connecticut Gen. Life Ins. Co.*, 867 F.2d 489 (9th Cir. 1988), *cert. denied*, —— U.S. ——, 109 S. Ct. 3216, 106 L. Ed. 2d 566 (1989) (California statute prohibiting unfair insurance claims processing pre-empted by ERISA); *Kelly v. Sears, Roebuck and Co.*, 882 F.2d 453 (10th Cir. 1989) (ERISA pre-empts Colorado bad-faith insurance law); *Anschultz v. Connecticut Gen. Life Ins. Co.*, 850 F.2d 1467 (11th Cir. 1988) (Florida statute providing private right of action to persons injured by violations of state's insurance code pre-empted by ERISA); *McManus v. Travelers Health Network of Florida*, 742 F. Supp. 377 (W.D. Tex. 1990) (Texas common-law remedies and remedies under the Texas Deceptive Trade

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effectively overruled a year later by the definitive ruling of the Supreme Court of California in *Commercial Life*, which held that the same California statute at issue in *Goodrich*, which provided remedies for "unfair methods of competition and unfair and deceptive acts or practices in the business of insurance," was pre-empted by ERISA, as required by this Court's holding in *Pilot Life*. 47 Cal. 3d at 483-84, 764 P.2d at 1065-66, 253 Cal. Rptr. at 688-89. In its discussion of the applicable law in *Commercial Life*, the California Supreme Court did not even refer to *Goodrich*, although it did discuss *Kanne*, *infra*, and other decisions consistent with its holding. *See* 47 Cal. 3d at 482-83, 764 P.2d at 1064-65, Cal. Rptr. at 687-88. It subsequently vacated the lower court's opinion in *Goodrich* and transferred the matter to the "Court of Appeal, Second Appellate District, . . . with directions . . . to reconsider in light of *Commercial Life* . . . ." *Goodrich v. General Tel. Co.*, 773 P.2d 450, 259 Cal. Rptr. 64 (1989). Hence, the case law to which petitioners point ultimately establishes the remarkable unanimity of opinion on the question they raise.

Practices Act pre-empted by ERISA);[19] *Cramer v. Association Life Ins. Co., Inc.*, 569 So. 2d 533 (La. 1990), *cert. denied*, 59 U.S.L.W. 3652, 111 S. Ct. 1391, 113 L. Ed. 2d 447 (1991) (remedial provisions of Louisiana Insurance Code pre-empted by ERISA). The State of Texas, by virtue of its opinion in the present case, now stands in line with that substantial body of law (A. 7-8, 10-11).

Petitioners nevertheless persist in alleging that some act of respondents, which allegedly deprived them of 24-hour-a-day nursing benefits under the Dow Plan (R. 230-31), entitles them to exploit state-law remedies under section 16, even though the Fifth Circuit previously determined that petitioners have no right to benefits for around-the-clock nursing care. *Cathey-I*, 907 F.2d at 561. Assuming, *arguendo*, that some act of respondents *did* interfere with petitioners' ERISA rights (and respondents maintain that, pursuant to *Cathey-I*, no such allegation is sustainable), petitioners are nevertheless barred from obtaining state law remedies under section 16. The claim of petitioners for section 16 remedies is, at bottom, no more than a claim for ERISA benefits, or a claim based on alleged interference with protected ERISA rights. The "exclusive" remedy for both claims is section 502(a) of ERISA, 29 U.S.C. § 1132(a). *Ingersoll-Rand*, —— U.S. at ——, 111 S. Ct. at 485, 486, 112 L. Ed. 2d at 487, 488; *Pilot Life*, 481 U.S. at 56-57. Petitioners'

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[19] Petitioners cite to *Mayfield v. Hartford Ins. Co.*, 699 F. Supp. 605 (W.D. Tex. 1988), as an "opinion that . . . correctly recognizes that article 21.21 [of the Texas Insurance Code] fits within the saving clause as a law regulating insurance . . . ." Petition, *Cathey-II* at 17. In *McManus v. Travelers Health Network of Texas*, the United States District Court for the Western District of Texas, with respect to its decision in *Mayfield*, stated as follows: "The Court hereby disapproves of and withdraws that opinion." 742 F. Supp. at 382. Petitioners do not acknowledge *Mayfield*'s withdrawal.

section 16 claim therefore conflicts with ERISA causes of action and is pre-empted by ERISA, *see Ramirez*, 890 F.2d at 763-64, a conclusion with which the justices of the Texas Supreme Court agree (A. 1-3, 10-11). This Court should accordingly decline petitioners' invitation to slide state-law remedies which "relate to" ERISA plans under a legal microscope once again, as it did three and a half months ago in *Cathey-I*, 59 U.S.L.W. at 3562, 111 S. Ct. at 964, 112 L. Ed. 2d at 1051 (with respect to the same statutory provisions petitioners ask this Court to reconsider), and as it did two months ago, with respect to similar remedial provisions arising under the Louisiana Insurance Code. *Cramer*, 569 So. 2d at 533, *cert. denied*, 59 U.S.L.W. at 3652, 111 S. Ct. at 1391, 113 L. Ed. 2d at 447.[20] There is nothing to "reexamine and clarify" with respect to ERISA pre-emption of state-law remedies for alleged improper handling of ERISA benefit claims or alleged interference with protected ERISA rights which has not been amply and precisely disposed of by this Court's prior opinions in *Pilot Life* and *Ingersoll-Rand*.

* * *

This Court's controlling holdings with respect to ERISA's implied pre-emption of conflicting state-law remedies are not the only bases under ERISA for denying the present Petition. The private remedies available to Texas consumers, which petitioners seek under section 16, do not, in any event, "regulate insurance" within the meaning of ERISA's saving clause. In *Pilot Life*, this Court confronted the question of whether a Mississippi

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[20] The opinion of the Louisiana Supreme Court, which concluded that remedial provisions of the Louisiana Insurance Code were pre-empted by ERISA, relied not only on *Pilot Life* but also on *Ramirez*, in which the Fifth Circuit held that section 16 was pre-empted by ERISA. *Cramer*, 569 So. 2d at 539.

cause of action based on the alleged bad-faith processing of an insurance claim was saved from ERISA pre-emption. 481 U.S. at 44. This Court found that while the Mississippi law of "bad faith" was "identified . . . with the insurance industry," *id.* at 50, its roots were firmly planted in general principles of tort and contract law. *Id.* at 50. As a result, a "common sense" understanding of the phrase "regulates insurance" inescapably required the conclusion that the broader base of "bad faith" law in Mississippi could support *any* breach of contract claim. *Id.* Such comprehensive state laws do *not* "regulat[e] insurance" within the meaning of ERISA's "saving clause" and *are* subject to ERISA pre-emption. *Id.*

Section 16, like the Mississippi bad-faith law at issue in *Pilot Life*, traces its roots to the law of torts and contracts and was enacted by the Texas legislature specifically to alter or eliminate some defenses that had developed under the common law, thereby providing what Texas deemed necessary *consumer* protections.[21] *See, e.g.*,

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[21] In their *Cathey-II* Petition, petitioners studiously avoid a firm characterization of what lies at the heart of their section 16 claim, undoubtedly because it resembles the Mississippi bad-faith claim pre-empted in *Pilot Life*. Stray references to "representations" allegedly made to petitioners, Petition, *Cathey-II* at 4, and to "misrepresentations" vaguely connected with insurance, *id.* at 12, 13, however, indicate that "misrepresentation" of some sort is probably at issue. A close reading of even the aforementioned loose allegations indicates Dow is accused of representing that the Catheys "were *covered*" under the employee benefit plan, *id.* at 4 (emphasis added), and that MetLife, acting through its agent, then "refused to continue paying for Bette Cathey's [24-hour-a-day] nurse, despite the earlier representations" of Dow. *Id.* at 4. Dow's "representation" was correct—the Catheys *were* covered under the Dow Plan. *Cathey-I*, 907 F.2d at 555—and petitioners were *not* entitled to 24-hour-a-day nursing care. *Id.* at 561. Petitioners' arguments are

Note, *Consumer Protection—Breach of Warranty Merger Doctrine No Defense to Deceptive Trade Practices Suit for Breach of Express Warranty, Alvarado v. Bolton, 749 S.W.2d 47 (Tex. 1988)*, 20 St. Mary's L.J. 689, 690-91 (1989); Note, *Insurance—Deceptive Trade Practices—Private Cause of Action for Unfair Insurance Claim Settlement Practices Exists Under Texas Deceptive Trade Practices Act and Insurance Code*, 20 St. Mary's L.J. 707, 707-09 (1989). Section 16 is simply one piece of an overall statutory framework which focuses, in part, upon the insurance industry but was designed to "encompass virtually every area of consumer protection" in the State of Texas. Note, *The 104(a)(2) Personal Injury Exclusion and the Texas Deceptive Trade Practices Act: A Possible Exclusion*, 41 Baylor L. Rev. 563, 564 (1989). It, together with the Texas Deceptive Trade Practices Act,[22] were enacted to make clear that "disgruntled Texas consumers have a powerful weapon in their hands." *Id.* at 565. That "weapon" includes treble damages and attorney's fees. Tex. Ins. Code Ann. art. 21.21 § 16(b); see also *McManus v. Travelers Health Network*, 742 F. Supp. at 380-81 (remedy of treble damages under Texas Deceptive Trade Practices Act pre-empted by ERISA); *Vail v. Texas Farm Bureau Mut. Ins. Co.*, 754 S.W.2d 129 (Tex. 1988) (insured's rights of remedial relief under article 21.21 of the Texas Insurance Code and under the Texas Deceptive Trade Practices Act are not mutually exclusive; each incorporates the other).

Indeed, even petitioners concede that section 16, *on its face*, sweeps into its scope all violations actionable

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therefore not only fatally flawed as a matter of law, they are without factual merit.

[22] *See, e.g.*, Tex. Bus. & Com. Code Ann. § 17.50(a) (Vernon 1987) (indicating the actions consumers may bring to obtain damages, including actions pursuant to Article 21.21 of the Texas Insurance Code).

under section 17.46 of the Texas Deceptive Trade Practices Act (A. 12), which is aimed at all business entities within its scope, not only at insurers, as the Supreme Court of Texas, *see Vail*, 754 S.W.2d at 135, and the Fifth Circuit, *see Ramirez*, 890 F.2d at 763, have recognized (*see also* A. 8). Common sense dictates that section 16 is therefore part of a comprehensive enforcement scheme designed to redress *all* unfair or deceptive *trade* practices in Texas, and as such is a law of general application which cannot be saved from ERISA pre-emption. *Pilot Life*, 481 U.S. at 50.

This Court has also adopted the McCarran-Ferguson Act test as a tool for determining when a state law "regulates insurance" within the meaning of ERISA's saving clause. *Pilot Life*, 481 U.S. at 48-49. As the Fifth Circuit previously found, section 16 fails that test. *Ramirez*, 890 F.2d at 763-64.

Under the McCarran-Ferguson Act test, three criteria are evaluated to determine if a particular practice falls within the "business of insurance" and therefore "regulates insurance" within the meaning of ERISA's saving clause. *Pilot Life*, 481 U.S. at 47, 51; *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 742-43 (1985). The three criteria are:

> "[*F*]*irst*, whether the practice has the effect of transferring or spreading a policyholder's risk; *second*, whether the practice is an integral part of the policy relationship between the insurer and the insured; and *third*, whether the practice is limited to entities within the insurance industry."

481 U.S. at 48-49 (emphasis in original) (quoting *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 129 (1982)).

Section 16 fails to meet all three criteria. It does not spread or transfer any risk. *Ramirez*, 890 F.2d at 763. Risk spreading occurs when the parties to an insurance contract enter into it, not when some after-the-fact event

occurs, such as the payment or denial of a benefit claim under a previously-transferred risk or the commencement of a lawsuit for such a benefit, as in the present case. *See Union Labor Life Ins. Co. v. Pireno*, 548 U.S. 119, 130 (1982). Nor is section 16 "integral" to the relationship between any insurer and an insured; rather, "it declares only that, whatever terms have been agreed upon in the insurance contract, a breach of that contract" may in some cases entitle a "person" to treble damages, plus attorney's fees. *Ramirez*, 890 F.2d at 763; *see also Pilot Life*, 481 U.S. at 51; *Insurance Board v. Muir*, 819 F.2d 408, 411-13 (3d Cir. 1987); Tex. Ins. Code Ann. art. 21.21 § 16(b) (Vernon Supp. 1991). Finally, section 16 is not limited to entities within the insurance industry. Petitioners themselves claim a "*private*" right of action under the statute (Petition, *Cathey-II* at 12), which sweeps into its scope unfair and deceptive trade practices in which virtually any business entity in the State of Texas may engage. *See Vail*, 754 S.W.2d at 135; *see also* Tex. Ins. Code Ann. art. 21.21 § 16(a) (Vernon Supp. 1991) (incorporating section 17.46 of the Texas Business & Commerce Code). Because section 16 fails each requirement of the McCarran-Ferguson Act test, it does not "regulat[e] insurance" within the meaning of ERISA's saving clause and is not saved from ERISA pre-emption. *Pilot Life*, 481 U.S. at 50; *Ramirez*, 890 F.2d at 763.

CONCLUSION

Petitioners are precluded by the final judgment in *Cathey-I* from litigating claims that could or should have been raised in that action. Moreover, the decision of the Texas Supreme Court, which petitioners ask this Court to review, comports with the applicable decisions of this Court. There is nothing "special" or "important" under Rule 10 for this Court to consider. The Petition should therefore be denied.

Respectfully submitted,

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Dated: New York, New York
June 3, 1991

APPENDIX

APPENDIX

LIST NAMING ALL PARENT COMPANIES AND SUBSIDIARIES OF RESPONDENTS METROPOLITAN LIFE INSURANCE COMPANY AND THE DOW CHEMICAL COMPANY, AS REQUIRED BY RULE 29.1 OF THIS COURT

Metropolitan Life Insurance Company

ASSET MANAGEMENT INTERNATIONAL, INC.
ASSOCIATED ADVISORS FUND, INC.
CS FIRST BOSTON GLOBAL FUND MANAGERS LTD.
DTSS INCORPORATED
EUROPEAN & PACIFIC INVESTMENT MANAGEMENT
GENESIS SEGUROS GENERALES, SOCIEDAD ANONIMA DE SEGUROS Y REASEGUROS
KOLON-MET LIFE INSURANCE CO., LTD.
MECCO HOLDING, INC.
MET LIFE INTERNATIONAL REAL ESTATE EQUITY SHARES, INC.
METLIFE AGRICULTURAL CREDIT CORP.
METLIFE FINANCIAL SERVICES, INC.
METLIFE FUNDING, II, INC.
METLIFE HEALTHCARE NETWORK OF CALIFORNIA, INC.
METLIFE HEALTHCARE NETWORK OF NORTHEAST FLORIDA, INC.
METPARK FUNDING, INC.
METROPOLITAN LIFE FOUNDATION
METROPOLITAN MANAGEMENT COMPANY
METROPOLITAN SERIES FUND, INC.
METROPOLITAN STRUCTURES WEST, INC.
MONTREAL INVESTMENT MANAGEMENT
MORGUARD RESOURCES LIMITED
NATIONAL ELECTRONIC INFORMATION CORPORATION

PARKCOMMUNICATIONS, INC.
QUADREAL CORPORATION
SANTANDER MET, S.A.
SEGUROS GENESIS, S.A.
TORONTO INVESTMENT MANAGEMENT
UR HOLDING COMPANY, INC.
VANBRIT INVESTMENT MANAGEMENT

The Dow Chemical Company

Aardvark Limited
Agron Inc.
Airco Generon Systems LP
Anticorrosivos Industriales Limitada
Arabian Chemical Company Limited
Bear Mountain CoGen, Inc.
Biochimica Del Balento S.p.A.
Brea Canyon CoGen, Inc
BCC CoGen, Inc.
Canary Moving Limited
Carleton Shipping and Leasing Corporation
Carleton Shipping and Leasing Limited
Chalk Cliff CoGen, Inc.
Chimtrade
Compagnie des Services Dowell Schlumberger S.A.
Conklin IPP, Inc.
Corona Energy Corporation
CoGen Admin Services, Inc.
CoGen Kern Bluff, Inc.
CoGen Lime Rock
CoGen Lynchburg, Inc.
CoGen Lyondell, Inc.
CoGen Poso Creek, Inc.
CoGen Power, Inc.
CoGen Terrace Bay, Inc.
Cranley Corporation Limited
Cromarty Petroleum Co. Limited
CC CoGen, Inc.
CEC Prime, Inc.

Dartigue Limited
Destec Energy, Inc.
Destec Engineering, Inc.
Destec Fuel Resources, Inc.
Destec Holdings, Inc.
Destec Operating Company
Destec Ventures, Inc.
Devonshire Underwriters Limited
Dexco Polymers
Donichem Chemical KFT
Double "C" CoGen, Inc.
Dow Chemical Iberica S.A.
Dow Corning (Korea) Ltd.
Dow Corning (Thailand) Ltd.
Dow Corning (UK) Management Ltd.
Dow Corning de Argentina S.A.I.C.
Dow Corning de Colombia, S.A. (Siliconas de Colombia Limitad a)
Dow Corning de Mexico S.A. de C.V.
Dow Corning de Venezuela S.A.
Dow Corning do Brasil Ltde.
Dow Corning Africa Silicones Inc.
Dow Corning Australia Pty. Ltd.
Dow Corning Canada, Inc.
Dow Corning Construction S.A.
Dow Corning Coordination Center S.A.
Dow Corning Corporation
Dow Corning Enterprises, Inc.
Dow Corning Foreign Sales Corporation, Inc.
Dow Corning Foundation
Dow Corning France S.A.
Dow Corning GmbH
Dow Corning GmbH (Austria)
Dow Corning Hansil Limited
Dow Corning Hong Kong Limited
Dow Corning Iberica S.A.

Dow Corning International Sales Corporation
Dow Corning Investment S.A.
Dow Corning Japan Ltd.
Dow Corning KK
Dow Corning Limited
Dow Corning New Zealand Ltd.
Dow Corning Opthamalmics, Inc.
Dow Corning S.p.A.
Dow Corning S.A.
Dow Corning Silicon Energy Systems, Inc.
Dow Corning STI Limited
Dow Corning STI, Inc.
Dow Corning Taiwan, Inc.
Dow Corning Wright Corporation
Dow Kakoh Kabushiki Kalsha
Dow Mitsubishi Kasel Limited
Dow-United Technologies Composite Products Inc.
Dowell Schlumberger (Asia) Limited
Dowell Schlumberger (Eastern), Inc.
Dowell Schlumberger (Far East), Inc.
Dowell Schlumberger (Middle East), Inc.
Dowell Schlumberger (Western) S.A.
Dowell Schlumberger de Chile Limitada
Dowell Schlumberger de Venezuela, S.A.
Dowell Schlumberger do Brasil Servicos Petroliferos Ltda.
Dowell Schlumberger Argentina Sociedad Anonima de Mineria
Dowell Schlumberger Canada Inc.
Dowell Schlumberger China, Inc.
Dowell Schlumberger Corporation
Dowell Schlumberger Inc.
Dowell Schlumberger International, Inc.
Dowell Schlumberger Italia S.A.
Dowell Schlumberger Participation
Dowell Schlumberger Peru, S.A.
Dowell Schlumberger Statistics Limited
DowElanco

DowElanco (Malaysia) Sdn Bhd
DowElanco (NZ) Limited
DowElanco (Singapore) Pte. Ltd.
DowElanco de Colombia S.A.
DowElanco Argentina S.A.
DowElanco Australia Limited
DowElanco B.V.
DowElanco Canada Inc.
DowElanco Chile S.A.
DowElanco China Ltd.
DowElenco Denmark A/S
DowElanco Export S.A.
DowElanco GmbH
DowElanco Iberica S.A.
DowElanco Industrial Ltda.
DowElanco International Ltd.
DowElanco Italia S.r.L.
DowElanco Japan Limited
DowElanco Limited
DowElanco Mexicana, S. A. de C. V.
DowElanco Pacific Limited
DowElanco Pflanzenschutzmittel Vertriebsg.m.b.H.
DowElanco S.A.
DowElancoSverige AB
DowElanco Taiwan Ltd.
DowElanco Tarim S.A.
DowElanco Venezuela, C.A.
Drilling Services S.A.
DCU/LB Trust
DH Compounding Company
DS Technical Services, Inc.
Eagle Flying Limited
El Dorado Terminals Company
Epoxital S.R.L.
Etoxilados del Plata S.A.
Etudes Et Fabrication Dowell Schlumberger
Eurosemences, S.A.

Family Comercio e Industria de Produtos de Limpeza Ltda.
First Chemical Factoring SpA
Fort Saskatchewan Ethylene Storage Corporation
Fort Saskatchewan Ethylene Storage Limited Partnership
Generon Systems
Generon Systems A.G.
Gruppo Lopetit S.p.A.
Gruppo Lopetit Trading SRL
Gurit Essex AG
H-D Tech. Inc.
Hammer Pharma S.p.A.
Hartel Diensten B.V.
HEP CoGen, Inc.
Indian Hills Development Corp. of Carroll County
International Chemical and Mining Corporation
International Oilfield Contractors, Inc.
J.C.P. Laboratories Inc.
Joliet Marine Terminal Trust Partnership
Kern Front CoGen, Inc.
Laboratories Pharmaceuticals Biotic Maroc S.A.R.L.
Lakeside Laboratories, Inc.
Louisiana Gasification Technology, Inc.
Lucky Dow Chemical Ltd.
Marion Morrell Dow (Europe) A.G.
Marion Merrell Dow Inc.
Merrell Dow Belgium S.A.
Merrell Dow Espana S.A.
Merrell Dow France et Cie (SNC)
Merrell Dow France S.A.
Merrell Dow Funal K.K.
Merrell Dow Manufacturing Limited
Merrell Dow Pharma GmbH
Merrell Dow Pharmaceuticals (Canada) Inc.
Merrell Dow Pharmaceuticals (N.Z.) Limited
Merrell Dow Pharmaceuticals Australia Pty Ltd.
Merrell Dow Pharmaceuticals Inc.

Merrell Dow Pharmaceuticals International Inc.
Merrell Dow Pharmaceuticals K.K
Merrell Dow Pharmaceuticals Limited
Merrell Dow Pharmaceuticals Pacific Limited
Merrell Dow Portuguesa Sociedade Quimica, S.A.
Merrell Puerto Rico, Inc.
N.V. Dow Corning S.A.
Northway CoGen, Inc.
NBW Industria E. Commercio Limitada
NKY Distribution Center Inc.
Oilfield International Equipment and Supplies, Inc.
Oilfield International Equipment and Supplies, Pty. Ltd.
P.T. Pacific Indomas Plastic Indonesia
Pacific Chemical (Pakistan) Ltd (PCPL)
Perennator GmbH
Petroquimica-Dow S.A. (Petrodow)
Promix System
Prosperity IPP, Inc.
Pumptech N.V.
PACLAN FB Haushaltsartikal Vertriebs GmbH
Recon Associates, Inc.
Rio Grande CoGen, Inc.
San Joaquin CoGen, Inc.
Scotdril Offshore Company
Services Conseils Dowell Schlumberger
Services Dowell Schlumberger S.A.
Sierra CoGen, Inc.
Silcover SpA
Siliconas de Chile Limitada
Siliconlas Del Peru S.A.
Siltech Limited
Site Services, Inc.
Societe Chimique Grevis S.A.
Stony Brook CoGen, Inc.
Suministradora de Productos Quimicos, S.A.
SJC CoGen, Inc.
Technical Consultants, Inc.
The Cynara Company

Tower Assurance Company Limited
Ulsan Pacific Chemical Corporation
United AgriSeeds, Inc.
Vorakim Kimya Sanayi Ve Ticaret Anonim Sirketi
Wabiskaw Explorations Ltd.
Wickhen Products of Delaware, Inc.
Wickhen Products Inc.
Wm. H. Muller S.A.—Minerios, Comercio e Navegacao
Zhejiang Pacific Chemical Corporation